Supreme Court, U.S.
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No. 05-195

In The
Supreme Court of the United States

CYNTHIA SIMPSON,

Petitioner,

v.

CHESTERFIELD COUNTY BOARD OF SUPERVISORS,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a local government may, consistent with the Establishment Clause, the Free Exercise Clause, and the Equal Protection Clause, invite religious leaders from certain religions to deliver a prayer at legislative sessions, while excluding leaders from all other religions.

LIST OF PARTIES

The Petitioner is Cynthia Simpson, a resident of Chesterfield County, Virginia. The Respondent is the Chesterfield County Board of Supervisors, the governing body for Chesterfield County.

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OPINIONS BELOW

The district court opinion *Simpson v. Chesterfield County Bd. of Supervisors*, 292 F.Supp.2d 805 (2003), is reprinted at App. 28. The Fourth Circuit opinion, *Simpson v. Chesterfield County Bd. of Supervisors*, 404 F.3d 276 (2005), is reprinted at App. 1.

JURISDICTION

The court of appeals decision denying the petitioners' petition for rehearing *en banc* was entered on May 10, 2005. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1). The United States District Court for the Eastern District of Virginia had jurisdiction pursuant to 28 U.S.C. § 1331.

CONSTITUTIONAL PROVISIONS INVOLVED

1. The First Amendment states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition government for a redress of grievances."

2. The Fourteenth Amendment states: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Since approximately 1984, the Chesterfield County Board of Supervisors has invited local religious leaders to deliver invocations at its legislative sessions. J.A. 561.[1] The county clerk maintains a list of local congregations, and annually sends an invitation letter addressed to the "religious leader" of each congregation on the list. J.A. 92. Most of the congregations on the list come from the local phone book, and county officials occasionally ask the clerk to add congregations to the list. J.A. 214-15, 223-24.

The Board's written policy requires that invocations contain elements of the "American civil religion" and that only representatives of "monotheistic religions" be invited to present them. *See* J.A. 63, 561. The Board expressly interprets this policy to include only Christians, Jews, and Muslims. Persons of these three faiths – which according to the Board comprise the "Judeo-Christian tradition" – are the only persons permitted to present invocations. J.A. 561.[2] Thus, the policy excludes not only the Petitioner but representatives of a broad range of other religions, including Hinduism, Buddhism, Sikhism and many Native American faiths. J.A. 562.

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[1] The abbreviation "J.A." refers to the Joint Appendix in the Court of Appeals. The abbreviation "App." refers to the Appendix to this Petition.

[2] The County has variously described the persons eligible to deliver prayers as leaders of "monotheistic religions," "Judeo-Christian monotheistic religions" and "monotheistic religions consistent with the Judeo-Christian religion." In fact, Jewish congregations were added to the list only after Simpson asked to participate, at the request of the County attorney. J.A. 34-35. It is unclear why the County has deemed Islam to fall within the Judeo-Christian umbrella. It is clear, however, that the County has no intent of welcoming any others into the tent. *See* J.A. 314, 353, 562, 603-07.

Although the County's policy requires invocations to be non-sectarian, non-proselytizing, and non-disparaging of other religions, the majority of the invocations have been overtly and expressly Christian, regularly invoking Jesus Christ by name. J.A. 561.

Cynthia Simpson, a Chesterfield County resident and a leader of the Wiccan faith, asked to be included on the list of persons authorized to present invocations at Chesterfield County Board meetings. The Board denied Simpson's request on the ground that her prayer would not be "made to a divinity that is consistent with the Judeo-Christian tradition." J.A. 21, 562. The Board refused to change course even after Simpson explained that she intended to present a nonsectarian, non-proselytizing invocation that referred to a divinity in very general terms, such as "creator of the universe." J.A. 355, 358.

In the course of explaining the denial of Simpson's request, Board members made disparaging comments about Simpson and her faith. Supervisor Renny B. Humphrey told the press: "I hope she's a good witch like Glinda," and "There is always Halloween."[3] J.A. 314-15. Board Chairman Kelly Miller told the press: "It is a mockery. It is not any religion I would subscribe to. There are certain places we ought not to go, and this is one of them." J.A. 271.

Simpson filed suit in the Eastern District of Virginia. Throughout the litigation, Chesterfield County acknowledged that it had an official policy of excluding all religions save Christianity, Judaism, and Islam from its roster

[3] Ms. Humphrey apologized for these comments at her deposition. J.A. at 320-21.

of congregations invited to deliver prayers. The County insisted, however, that it was entitled to endorse what it called the "American Civil Religion," and to choose prayer-givers who adhered to that religion.

On cross-motions for summary judgment, the district court found that Chesterfield County's policy of excluding all but Christians, Jews and Muslims violated the Establishment Clause. The Fourth Circuit Court of Appeals reversed, finding that Chesterfield's discriminatory policy was legitimized by *Marsh v. Chambers*, 463 U.S. 783 (1983).

REASONS WHY THE WRIT SHOULD BE GRANTED

I. The Decision Below Is In Conflict With Numerous Decisions Of This Court On An Issue Of Central Importance To Our Nation's Core Values.

The decision below labors to obscure with legal smoke and mirrors what is obvious to even the most unstudied observer: Chesterfield County may, under the Fourth Circuit's interpretation of the Constitution, favor some religions over others. The decision casts aside the principle that lies at the heart of the Establishment Clause: that government may not confer privileges on its citizenry on the basis of religion.

Although Establishment Clause jurisprudence may be beset with conflicting tests, uncertain outcomes, and ongoing debate, one principle has never been compromised: "[T]he clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another." *Larson v. Valente*, 456

U.S. 228, 244 (1982). As this Court recently reaffirmed, the "First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion." *McCreary County v. ACLU of Kentucky*, 545 U.S. ___, 125 S. Ct. 2722, 2733 (2005); *accord id.* at 2746 (O'Connor, J., concurring). Accordingly, this Court has "time and again held that the government generally may not treat people differently based on the God or gods they worship, or do not worship."[4] *Board of Ed. of Kiryas Joel v. Grumet*, 512 U.S. 687, 714 (1994) (O'Connor, J., concurring).

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[4] *See, e.g., Allegheny v. Greater Pittsburgh ACLU*, 492 U.S. 573, 604 (1989) ("Whatever else the Establishment Clause may mean . . . it certainly means at the very least that government may not demonstrate a preference for one particular sect or creed."); *Braunfeld v. Brown*, 366 U.S. 599, 607 (1961) (plurality opinion) ("If the purpose or effect of a law is to . . . discriminate invidiously between religions, that law is constitutionally invalid."); *Fowler v. Rhode Island*, 345 U.S. 67, 69 (1953) (subjecting religious services of Jehovah's Witnesses, but not others, to regulation "is merely an indirect way of preferring one religion over another" and is thus unconstitutional); *Johnson v. Robison*, 415 U.S. 361, 384 (1974) ("[The Constitution] prohibits . . . [government from] discrimnat[ing] invidiously between religions."); *Thomas v. Review Bd. of Ind. Employment Sec. Div.*, 450 U.S. 707, 716 (1981) ("A state may not exclude individual Catholics, Lutherans, Mohammedans, Baptists, Jews, Methodists, Non-believers, Presbyterians, or the members of any other faith, because of their faith, or lack of it, from receiving [public] benefits.") (citation omitted); *Bowen v. Roy*, 476 U.S. 693, 708 (1986) ("The Constitution forbids antagonism by Congress . . . towards any particular religious beliefs."); *United States v. Ballard*, 322 U.S. 78, 87 (1944) ("The First Amendment does not select any one group or any one type of religion for preferred treatment. It puts them all in [the same] position."); *Everson v. Bd. of Educ.*, 330 U.S. 1, 15 (1947) ("The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can . . . prefer one religion over another."); *Zorach v. Clauson*, 343 U.S. 306, 314 (1952) ("The government must be neutral when it comes to competition between sects."); *Engel v. Vitale*, 370 U.S. 421, 431 (1962) ("When the power, prestige and financial support of government is

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The Court has been equally firm in rejecting the "truly remarkable view" that "government may espouse a tenet of traditional monotheism." *McCreary*, 545 U.S. at ___, 125 S. Ct. at 2744-45. *See Torcaso v. Watkins*, 367 U.S. 488, 495 (1961) ("We repeat and again reaffirm that neither a State nor the Federal Government can constitutionally ... aid those religions based on a belief in the existence of God as against those religions founded on different beliefs.") Nor may government "establish an official or civic religion as a means of avoiding the establishment of a religion with more specific creeds." *Lee v. Weisman*, 505 U.S. 577, 590 (1992).

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placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain."); *Sch. Dist. of Abington Township v. Schempp*, 374 U.S. 203, 216 (1963) ("the Establishment Clause forbids [] governmental preference of one religion over another"); *Epperson v. Arkansas*, 393 U.S. 97, 103-04 (1968) ("Government in our democracy, state and national, must be neutral in matters of religious theory, doctrine, and practice. It may not be hostile to any religion ... and it may not aid, foster, or promote one religion or religious theory against another...."); *Walz v. Tax Comm'n*, 397 U.S. 664, 672-73 (1970) (upholding availability of property tax exemption to religious organizations because governing statute "has not singled out one particular church or religious group...."); *Gillette v. United States*, 401 U.S. 437, 450 (1971) ("The Establishment Clause prohibits government from abandoning secular purposes in order to put an imprimatur on one religion ... or to favor the adherents of any sect or religious organization."); *Roemer v. Bd. of Pub. Works of Md.*, 426 U.S. 736, 745-46 (1976) (plurality opinion) ("The Court has enforced a scrupulous neutrality by the State, as among religions...."); *Wallace v. Jaffree*, 472 U.S. 38, 52-53 (1985) (the First Amendment proscribes not only "the preference of one Christian sect over another, but ... require[s] equal respect for the conscience of the infidel, the atheist, or the adherent of a non-Christian faith such as Islam or Judaism."); *Employment Div. v. Smith*, 494 U.S. 872, 877 (1990) ("The government may not ... impose special disabilities on the basis of religious views or religious status."); *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993) ("In our Establishment Clause cases we have often stated the principle that the First Amendment forbids an official purpose to disapprove of a particular religion....").